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09/992,862	11/05/2001	Anne-Marie Kermarrec	MS171124.1/40062.163US01	5999
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Timothy B. Scull Merchant & Gould P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			EXAMINER REFAI, RAMSEY	
			ART UNIT	PAPER NUMBER
			3627	
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			09/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/992,862

Applicant(s)

KERMARREC ET AL.

Examiner

Ramsey Refai

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 20-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 20-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3627

DETAILED ACTION

Response to Amendment

Responsive to claims filed May 11, 2007 and remarks filed January 31, 2007. Claims 1, 2, 4, 5, 7, 20-22, 24, and 26 have been amended. Claims 1-7 and 20-26 remain pending further examination.

Response to Arguments

1. Applicant's arguments filed January 31, 2001 have been fully considered but they are not persuasive.

- In the remarks, the Applicant argues in substance:

Argument A: *Fig 1 supports the newly added limitation " independent of hierarchical relationships" since Fig.1 and accompanying specification does not include any language describing Fig 1 as hierarchical.*

In response, the Examiner disagrees. The limitation is a negative limitation that remains unsupported by the Applicant disclosure. The mere absence of a positive recitation is not basis for exclusion. Regarding negative limitations, the MPEP states: "Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. ... The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation, which does not have basis in the original disclosure, should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement" MPEP 2173.05(i). Rejection is maintained.

Argument B: *Caram is silent to a message having broadcast type information.*

Art Unit: 3627

In response, the Examiner respectfully disagrees. Caram' s teaches a broadcast message that is broadcast to a plurality of nodes. This message also contains a plurality of data fields related to the broadcasting of the message (see at least column 3, line 63-column 4, line 24).

Applicant's additional arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 20-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed to a system of *modules*. As described in the Applicant' s specification (pages 8-9), modules can include programs. Programs per se are not one of the statutory classes of invention. Programs must be tangibly embodied on a computer readable medium and be drawn to a practical application in order to be eligible for patent protection. Therefore, claims 20-23 are directed to non-statutory subject matter.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 1-7, 20-24, and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in

Art Unit: 3627

the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 20 have been amended to include the limitation “ *two or more but less than all*” which is not supported by the Applicant’ s specification.

6. Claim 26 has also been amended to include the limitation “ less than all nodes in the network” which is also unsupported by the Applicant’ s specification.

7. Claims 1, 20, and 24 have been amended to include the limitations “ *independent of hierarchical relationships*” which is not supported by the Applicant’ s specification.

Furthermore, the newly added limitation “ *independent of hierarchical relationships*” appears to be a negative limitation. Regarding negative limitations, the MPEP states: “ Any negative limitation or exclusionary proviso must have basis in the original disclosure. If alternative elements are positively recited in the specification, they may be explicitly excluded in the claims. ... The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation, which does not have basis in the original disclosure, should be rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.” MPEP 2173.05(i)

The Examiner notes that the limitation “ *independent of hierarchical relationships*” was previously the subject of a similar rejection in the office action mailed May 23, 2006. In the September 21, 2006 response, the Applicant deleted the unsupported limitation. The Applicant has now reintroduced that same limitation.

Claims 2-7 and 21-23 depend on claims 1 and 20 and are therefore rejected under the same rationale.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Art Unit: 3627

9. Claims 4, 20-23, and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20-23 are indefinite because it is not clear whether these claims are directed to a *computer system* or a *node*.

Claim 4, the limitation, " the plurality of subscriber nodes" lacks proper antecedent basis.

Claim 26, the limitation " additional subscribed nodes" lacks proper antecedent basis.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-4, and 20-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Caram (US Patent No. 5,245,607).

12. As per claim 1, Caram teaches a method of disseminating information to a plurality of nodes, the nodes connected in a network environment, said method comprising:

receiving, at a given node, a disseminated message, the message having broadcast-type information (column 1, lines 15-16, column 2, lines 26-27) and

for the given node, sending the message to a plurality of other nodes identified in a partial view, wherein the partial view is specific to the given node and resides locally to the given node and identifies any two or more but less than all other nodes independent of hierarchical relationships wherein the number of nodes identified in the partial view was

Art Unit: 3627

determined in order to provide a determined probability of the message being sent to all nodes (column 2, lines 26-27, column 3, lines 29-42; each node contains a dynamically formulated routing table of neighboring nodes, which are a portion of the network nodes).

13. As per claim 2 Caram teaches the act of sending the message to the plurality of other nodes further comprises sending of the message to all nodes identified in the partial view (column 2, lines 18-20).

14. As per claim 3, Caram teaches each node in the network maintains a partial view (column 3, lines 33-42).

15. As per claim 4, Caram teaches the partial view comprises address information for at least one of the plurality of subscribed nodes (column 3, lines 33-42).

16. As per claim 20, Caram teaches a computer system for disseminating information in a distributed network of nodes, each node comprising:

a receive module for receiving a broadcast message (column 1, lines 15-16, column 2, lines 26-27);

a storage module for storing information related to other nodes in a partial view, wherein the partial view is specific to each node and identifies any two or more but less than all other nodes independent of hierarchical relationships wherein the number of nodes identified in the partial view was determined in order to provide a determined probability of the message being sent to all nodes (column 3, lines 32-42)

a communication module for transmitting broadcast information to nodes indicated in the partial view (column 2, lines 26-27, column 3, lines 29-42).

17. As per claim 21, Caram teaches a partial view comprises address information for at least one other node (column 3, lines 33-42).

Art Unit: 3627

18. As per claim 22, Caram teaches a communication module is operable to transmit broadcast information to all nodes identified in the partial view (column 3, lines 33-42).

19. As per claim 23, Caram teaches the computer system is part of a distributed network of computer systems and wherein other computer systems in the network maintain a partial view of the entire network (column 2, lines 3-23),

20. As per claim 24, Caram teaches a network of nodes having the ability to communicate information between said nodes, said network comprising:

an application-based broadcast protocol using a gossip-based algorithm (column 1, lines 15-16, column 4, lines 30-31; here a node broadcasts a received broadcast message to other nodes using the routing table. This is gossip based algorithm as defined in paragraph [0004] of the Applicant's specification, which explains that gossip based algorithm is the distribution of a new message to other nodes.)

each node maintains a partial view of the entire network independent of hierarchical relationships, wherein number of nodes identified in the partial view was determined in order to provide a determined probability of a message being sent to all nodes (column 3, lines 31-39) and

each node gossips only to other nodes identified in each node's partial view (column 2, lines 24-33).

21. As per claim 25, Caram teaches a computer readable medium having stored thereon a data structure comprising:

a first identification field for storing address location information for a node in a network environment, a second identification field for storing address location information for another node in a network environment, wherein the first and second identification fields represent a

Art Unit: 3627

partial view of the network environment; and wherein the data structure is used for a gossip-based communication between the nodes in the network (Figures 5-6).

22. As per claim 26, Caram teaches a plurality of additional identification fields, each field identifying address information for additional subscribed nodes in the network but less than all other nodes in the network (Figures 5-6).

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caram in view of Minyard (US Patent No. 6,779,038).

25. As per claims 5 and 6, Caram teaches that a node received a broadcast message only once (column 2, lines 24-26) and also teaches that messages can be discarded (column 4, line 62) but fails to *explicitly* teach storing identification information related to the received message to enable the determination of whether the message has been previously received, determining whether the received message has been previously received; and if the message has been previously received, then the message is not sent to any other node identified in the partial view.

However, Minyard teaches a method of determining if a message has been previously received by comparing each previously received message in a queue to determine if there is a match. If it is determined that the message has been previously received, the message is discarded. (See Fig. 3, elements 306 and 312, column 4, line 55-column 5, line 4). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to

Art Unit: 3627

combine the teachings of Caram and Minyard because doing so would provide a method of discarding duplicate broadcast messages received at a node in order to avoid send messages already sent by the node to minimize inefficient use of the network bandwidth.

26. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Caram in view of Kawano et al (US Patent No. 5,594,872).

27. As per claim 7, Caram teaches determines whether to send a message or not (column 2, lines 25-45) but fails to teach determining whether the message is a broadcast-type message.

However, Kawano et al teach determining whether a message is intended for itself, a group of the processing units or an address set for broadcast. (See column 8, lines 15-19) It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to combine the teachings of Caram and Kawano et al because doing so would allow a node to determine if a message received by a node is intended for itself or for broadcasting to other nodes thereby preventing the broadcasting of a message intended for itself.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

Art Unit: 3627

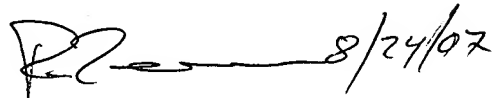
however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai
Examiner
Art Unit 3627
August 22, 2007
/RR/


F. RYAN ZEENDER
SUPERVISORY PATENT EXAMINER